

**REMARKS**

Claims 60-76 are pending in the application. Claim 62 is herein amended in accordance with the Examiner's requirement at page 2 of the Office action. Reconsideration and allowance of all claims are respectfully requested in view of the following remarks.

- Claims 60, 63-68, 73, and 75 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Blaschke* (U.S. Patent No. 6,260,302) in view of *Yen* (U.S. Patent No. 6,921,181) and further in view of *Nadel* (U.S. Patent No. 6,789,972). Applicants respectfully traverse this rejection.

The claimed fish landing apparatus improves over conventional fish landing apparatus by uniquely providing a structure that is adaptable, modular, and that is able to be optimized by minimizing the weight and space needed for a lighted, collapsible landing net apparatus. As a result of the claimed combination, conventional problems of bulky, non-collapsible, heavy, and complicated fish landing apparatus are reduced or eliminated. In particular, a telescoping (and otherwise collapsible) fish landing apparatus illuminates a net portion for landing a fish, without using heavy batteries, remote switches, lengthwise conductors, light tubes, or other complicated and heavy structure.

There would have been no suggestion or motivation to have combined references as posited in the ground of rejection, "it would have been obvious to one of ordinary skill in the art to take the device of *Blaschke* and add the [LED] light source of *Yen*, so as to provide proper illumination of the device in the dark while using minimal power." (i.e., Office action, at page 3). **First**, both *Blaschke* and *Yen* teach away from the claimed combination, and the rejection amounts to "picking and choosing." **Second** there is no support for the just-quoted statement of alleged motivation. **Third**, the applied references, alone or in combination, fail to teach or

suggest the claimed combination.

1. The positioning of light 76 in *Blaschke* teaches away from the claimed arrangement of components because a modification that would place light 76, attached to motor 68, at a position where light 76 would illuminate an extended hinged loop net frame 12 and attached net 14 would render the positioning of motor 68 unsatisfactory for its intended purpose of retracting rigid hingedly attached frame members 12A into handle 16 (e.g., Figs. 6-8) (emphasis added). Similarly, a light 76 adapted to be attached to handle head 20 or to an extending end of drive shaft 24 would render unsatisfactory the intended operation of retracting the multiple hinged frame members 12A into the hollow handle 16 (e.g., col. 1: lines 46-50). Since the *Blaschke* device would be rendered inoperable by the Examiner's proposed modification, so there would have been no suggestion or motivation. In re Gordon, 221 USPQ 125 (Fed. Cir. 1984)(A proposed modification cannot render the prior art unsatisfactory for its intended purpose.); MPEP 2143.01. *Yen* also teaches away from the claimed combination because modifying *Yen* to have a "radially-aligned contact pair opened or closed by rotation of the rotary switch lens for on/off switching of the electric power to the LED," as claimed, would render unsatisfactory the connection between conducting point 231 and terminal 2611 or the connection between switch 27 and terminal 2612 (see Webster's definition of "radial," *infra*). In re Gordon, *supra*.

2. The Examiner's statement of alleged motivation ("so as to provide proper illumination of the device in the dark while using minimal power") is directly in conflict with *Yen* because *Yen* is addressed to using a high-power LED 21 and the heat-related problems associated with the high power (e.g., Abstract; col. 1: lines 24-28).

3. The applied prior art references, alone or in combination, fail to teach or suggest the claimed fish landing apparatus that includes "a self-contained light body for illuminating the net, the light body adapted for being attached to one of the net and the net attachment section . . . the

light body comprising . . . a radially-aligned contact pair opened or closed by rotation of the rotary switch lens for on/off switching of the electric power to the LED," as claimed in claim 60.

*Blaschke* discloses a drive shaft 24 slidable within a handle 16, the drive shaft having a slip joint 38 that allows the drive shaft 38 to be pivoted to fold over onto the outside of the handle 16 when the hinged net frame 12 is retracted into the handle 16 (e.g., col. 4: lines 38-40; Fig. 6). To retract the hinged net frame 12 into the handle 16, a removed end 24B of drive shaft 24 may be pulled out of handle 16 using a pull ring 36 (e.g., Fig. 4), or a handle mounted hand crank mechanism 50 may be used for rotating a barrel/drum 52, thereby pulling cables 56, 58 that pull a slider 62 attached to pivoting members 12A of linked net frame 12 (e.g., col. 4: line 59 to col. 5: line 17; Fig. 7), or a reversible electric motor 68 may be used for moving the slider 62 between an extended and a retracted position (e.g., col. 5: lines 19-24; Fig. 8). A light 76, which would help the fisherman see at night, may be attached to an electric motor 68 attached to handle 16 (e.g., col. 5: lines 26-27; Fig. 8).

By comparison, *Blaschke* does not teach or suggest "a self-contained light body for illuminating the net," but instead only discloses that a light 76 may be attached to an electric motor 68 that, in turn, is attached to handle 16. Electric motor 68 is separated from a net extension end of handle 16 by a space for storing all the retracted frame members 12A, and light 76 is attached to motor 68, so light 76 is far-removed from a net extension end of handle 16 and is therefore not structured for illuminating the net. Applicants respectfully submit that the claimed "illuminating the net" requires a specific structural relationship and arrangement between claimed components, and such is not taught or suggested in *Blaschke*. Innova/Pure Water Inc. v. Safari Water Filtration Sys. Inc., 72 USPQ2d 1001, 1006-08 (Fed. Cir. 2004); MPEP § 2173.05(g). There is no teaching or suggestion of a self-contained light body for illuminating a net in *Blaschke*.

*Blaschke* also does not teach or suggest "the light body adapted for being attached to one of the net and the net attachment section," as claimed in combination with "a plurality of telescoping sections that include a handle section at one end of the telescoping sections and a net attachment section at an opposite end of the telescoping sections". Rather, *Blaschke* discloses hinged members 12A and net 14 being attached to a near end 24A of drive shaft 24 (e.g., 2: 55-57; 5: 15-17) while light 76 is attached to an opposite end of the device, at a handle end via a motor 68 (e.g., 5: 25-26; Fig. 8). Therefore, the light 76 of *Blaschke* is not attached to a net attachment section as claimed.

Light 76 is also not a "self-contained light body," but instead appears to share a power supply with motor 68. By comparison, the claimed "self-contained light body," for example, may be separately made watertight, may be removed for separate use or for servicing, may be repositioned at a different portion of the subject fish landing apparatus, allowing it to be configured in many different ways, and such would not be possible according to the *Blaschke* disclosure.

The secondary reference to *Yen* discloses a heat-dissipating flashlight having a metal lamp housing 24 that secures an LED 21 therein; LED 21 has an anode 211 connected to a conducting point 231 and a cathode 212 connecting to a base part 23 of housing 24 (e.g., 4: 27-32, 61-63; Fig. 3). A power source 261 has a positive terminal 2611 connecting to the conducting point 231 and has a negative terminal 2612 connecting to a casing 26 via a spring and a switch 27 (e.g., 4: 36-39; Fig. 3). The flashlight is turned on or off using switch 27 (e.g., 4: 15-17, 44-46).

By comparison, *Yen* does not teach or suggest "a radially-aligned contact pair opened or closed by rotation of the rotary switch lens for on/off switching of the electric power to the LED," as claimed, but instead discloses a center conductor 231 contacting a battery (+) terminal

2611. Applicants respectfully submit that an abutment of a center conductor with a battery terminal, as in *Yen*, is not a radially-aligned contact pair, as claimed. Webster's defines "radial" as "made in the direction of a radius; going from the center outward or from the circumference inward along a radius." (Webster's Encyclopedic Unabridged Dictionary, Gramercy, NY 1989)(emphasis added). The claimed contacts are aligned along a radius, whereas the *Yen* conducting point is coaxially aligned with battery terminal 2611 and is therefore not radially aligned (aligned in the direction of a radius).

The tertiary reference to *Nadel* does not cure the above-noted deficiencies of the primary and secondary references. Since the applied references, alone or in combination, fail to teach or suggest all the claim limitations, the Examiner's statement of alleged motivation is inapposite.

Since there would have been no suggestion or motivation to have combined references, since the statement of alleged motivation is inapposite, and since the applied references, alone or in combination, fail to teach or suggest all the claim limitations, Applicants respectfully request the § 103 rejection of claims 60, 63-68, 73, and 75 be withdrawn.

There is also no support in the references for the rejections of claims 64-68, 73 and 75 as stated in the Office action at pages 4 and 5. Specifically, Blaschke does not teach or suggest a brightness level of an LED, the applied combination fails to teach or suggest a brightness adjuster or a reflective frame member or fluorescent pigment, etc.

Dependent claims 61-75 are patentable at least by virtue of their respective dependencies from independent claim 60.

The grounds of rejection therefore amount to **improper hindsight analysis** because selected parts of the individual references are being cited without consideration of the invention

as a whole (emphasis added). See *In re Wesslau*, 147 USPQ 391, 393 (CCPA 1965) (“impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one skilled in the art”). There is nothing in the applied references to suggest the claimed combinations, and it is respectfully submitted that the Examiner’s statements are unsupported by any reasoning other than that gleaned from Applicant’s disclosure, and selected parts of the individual references are being cited without consideration of the invention as a whole. *Id.*

- Claims 61-62 and 74 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Blaschke* in view of *Yen* and further in view of *Nadel* and still further in view of *Wallin* (U.S. Patent No. 3,077,693). Applicants respectfully traverse this rejection.

The quaternary reference to *Wallin* does not cure the above-noted deficiencies of the other three references. Specifically, *Wallin* also does not teach or suggest "a self-contained light body, the light body adapted for being attached to one of the net and the net attachment section . . . the light body comprising . . . a radially-aligned contact pair opened or closed by rotation of the rotary switch lens for on/off switching of the electric power to the LED," where the net attachment section is part of "a plurality of telescoping sections that include a handle section at one end of the telescoping sections and a net attachment section at an opposite end of the telescoping sections" as claimed in independent claim 60.

Instead, *Wallin* discloses an elongated flashlight 7 that functions as the handle for a net and that may be any length (e.g., 1: 46-47; 2: 42-44); a switch 32 is disposed in the barrel 8 to be moved by the thumb of a hand gripping the barrel (e.g., 2: 44-46); and several sealing elements or gaskets 15, 42, etc. that render the flashlight 7 waterproof (e.g., 2: 48-49). Such does not teach or suggest any of the above-noted limitations of independent claim 60.

Claims 61-62 and 74 are patentable at least by virtue of their respective dependencies from independent claim 60.

In addition, the Examiner's proposed modification of *Blaschke* by inserting neck portion 14 and gasket 15 of *Wallin* in the handle head 20 of *Blaschke* would render the *Blaschke* device inoperable for its intended purpose of retracting and extending hinged loop 12 therein. A proposed modification cannot render the prior art unsatisfactory for its intended purpose. In re Gordon, *supra*, cited in MPEP § 2143.01.

Further, contrary to the ground of rejection of claim 62 (i.e., Office action, at page 6) Figure 3 of *Wallin* does not teach or suggest the claimed structure where a net attachment section of a plurality of telescoping sections has a shaft with a protruding portion and where "the first lengthwise portion of the light body has an outer surface that includes a shape essentially the same as the shape of the protruding portion of the shaft, thereby effecting a keyed radial orientation of the light body respecting its inserted position in the shaft," as claimed. Instead, Figure 3 of *Wallin* discloses a portion 14, 15 that is coaxial with respect to housing 11 and its neck 12 and that appears to be insertable without regard to radial orientation. By comparison, as noted above, Webster's defines "radial" as "made in the direction of a radius; going from the center outward or from the circumference inward along a radius," and the claimed "keyed radial orientation of the light body respecting its inserted position in the shaft" is therefore missing from the *Wallin* structure because there is no orientation of portion 14, 15 therein.

The rejection amounts to **impermissible "picking and choosing."** In re Wesslau, *supra*. (emphasis added). Since the applied references, alone or in combination, fail to teach or suggest all the claim limitations, the Examiner's statement of alleged motivation is inapposite and Applicants respectfully request the § 103 rejection of claims 61-62 and 74 be withdrawn.

- Claims 69-72 stand rejected under 35 U.S.C. § 103(a) as being obvious over *Blaschke* in view of *Yen* and further in view of *Nadel* and still further in view of *Hansen* (U.S. Patent No. 6,000,808). Applicants respectfully traverse this rejection.

The quaternary reference to *Hansen* does not cure the above-noted deficiencies of the other three references. Specifically, *Hansen* also does not teach or suggest "a self-contained light body, the light body adapted for being attached to one of the net and the net attachment section . . . the light body comprising . . . a radially-aligned contact pair opened or closed by rotation of the rotary switch lens for on/off switching of the electric power to the LED," where the net attachment section is part of "a plurality of telescoping sections that include a handle section at one end of the telescoping sections and a net attachment section at an opposite end of the telescoping sections" as claimed in independent claim 60.

The rejection amounts to **impermissible "picking and choosing."** *In re Wesslau, supra*. (emphasis added). Claims 69-72 are patentable at least by virtue of their respective dependencies from independent claim 60. Since the applied references, alone or in combination, fail to teach or suggest all the claim limitations, Applicants respectfully request the § 103 rejection of claims 69-72 be withdrawn..

- Claim 76 stands rejected under 35 U.S.C. § 103(a) as being obvious over *Wallin* in view of *Yen*. Applicants respectfully traverse this rejection.

There would have been no motivation to have modified the applied references because the Examiner's proposed modification would render the prior art references unsatisfactory for their respective intended purposes. Even if the applied references could somehow be combined, a *prima facie* case of obviousness has not been presented because the statement of alleged motivation is unsupported, and because the applied references, alone or in combination, fail to



teach or suggest all the claim limitations.

The intended operations of *Wallin* would be rendered inoperable by the proposed modification. In re Gordon, *supra*. In one example, an important object of *Wallin* is for the illuminating means to be waterproof and adapted to function while submerged (e.g., 1: 12-15). To accomplish this object, sealing elements or gaskets 15, 42, etc. permit the device to function while submerged in addition to protecting the parts thereof from damage from water or moisture (e.g., 2: 48-51). Such water protection and waterproof operation would be rendered unsatisfactory by somehow attempting to rotate housing 10 or portions thereof as a rotary switch. In addition, it appears that rotation of lens 17 or its retaining ring 18 would not effect any switching.

In another example, *Wallin* includes a slidable thumb switch 32 having a contact 30 connected to contact 26 of socket 21 via wire 31 (e.g., 2: 9-11, 18-20), thereby allowing the intended operation as an independent flashlight having a thumbswitch (e.g., 1: 18-19), and such would be rendered inoperable by a modification that removes a thumbswitch from barrel 8 (e.g., by use of a switch in an insertable module) and by a modification that breaks a fixed connection of wire 31 and socket contact 26 (i.e., as proposed by the Examiner's statement).

The proposed modification (i.e., apparently the removal of housing 24 from casing 26) would also eliminate the functionality of switch 27 of *Yen*, rendering that corresponding switch operation unsatisfactory for its intended purpose. In yet another example, *Yen* cannot be modified to be "a module insertable into a distal end of the shaft," as claimed because such would render the heat dissipation operation of *Yen* unsatisfactory by covering up heat sinks 241 if such are inserted into a barrel 8 of *Wallin*.

The Examiner's statement of alleged motivation ("to take the device of Wallin and add the [LED] light source of Yen, so as to provide proper illumination of the device in the dark while using minimal power") is directly in conflict with *Yen* because *Yen* is addressed to using a high-power LED 21 and the heat-related problems associated with the high power (e.g., Abstract; col. 1: lines 24-28)(high-power is not minimal power), and is inapposite because *Wallin* cannot be combined with *Yen* without rendering intended operations inoperable and unsatisfactory.

In addition, the cover set 25 of *Yen* engages the housing 24, thereby being a separate piece; there is no disclosure of a lens in cover set 25 and cover set 25 is not a rotary switch lens for on/off switching of an LED in a module. Although prior art of Figure 1 therein has a lens cover 15 with a lens, the Fig. 3 device and corresponding description do not disclose a lens. Further, the Figure 1 lens cover 15, when rotated, would only serve to loosen lens cover 15 and its lens from their attachment to housing 14.

Since the invention as a whole is not taught or suggested by the applied references, Applicants respectfully request the rejection of claim 76 be withdrawn.

#### **Request for Interview**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly **requested to call** the undersigned at the telephone number listed below.

Applicant hereby petitions for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 10-0270.

Amendment under 37 C.F.R. § 1.116  
Application Serial No. 10/699,519

Respectfully submitted,



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